

David Dickson, Disponnee of Thomas Dickson his Brother, who was Husband and Disponnee of Griffel Rachel Baillie, only Child of the deceased John Baillie of Walsen, and his Majesty's Advocate, - - - } Appellants.
 George Lockhart of Carnwath, Esq; eldest Son and Heir of George Lockhart of Carnwath, Esq; deceased, - - - - - } Respondent.

A N D

The said George Lockhart, - - - - - Appellant.
 The said David Dickson, and his Majesty's Advocate, - - - - - Respondents.

The CASE of George Lockhart Respondent in the Original Appeal.



CHRISTOPHER Baillie of Walsen was seized in Fee of the Lands of Walsen and others, near to 400*l.* of yearly Rent, which were held, partly of the Crown, and partly of Mr. Lockhart of Carnwath, under a Feu Duty or Quit-rent; he was remarkable for his Economy and Skill in the Management of Country Affairs, and dying in the Year 1694, left his Estate fully tenanted, and was succeeded by John Baillie his Son and Heir.

John the Son, though no Way equal to his Father in the Management of Country Affairs, having spent many Years of his Life in England, where he had contracted Intimacies, had imbibed a Notion, that by feeding of Cattle, and breeding of Horses, he could raise the Rents of his Estate, and by this Scheme of Improvement add greatly to the Value of it. He set out upon this Plan, and took into his own Hands the greatest Part of the Lands of Walsen and Elrindale: He stock'd them mostly with Black Cattle, which he afterwards carried up to the Markets in England, and thus by Degrees launched out into a very extensive Dealing, and having no longer Occasion for the Tenants Houses on these Lands, which were many in Number and expensive to uphold, he either demolish'd them, or allowed them to go into total Disrepair.

By this Improving Scheme, and a loose disorderly Life, Mr. Baillie run himself into considerable Difficulties, and contracted great Debts; whereupon several of his Creditors proceeded in legal Diligence, both against his Person and Estate, by Hornings, Inhibitions, Adjudications, &c. to screen himself from these, he took Sanctuary in the Abbey of Holyrood-house; and it appears from authentick Documents, afterwards produced in a Process of Ranking of those Creditors, that his Debts at Whitsunday 1709, amounted to 74,923 *l. Scots*, or 6243 *l. 13 s. 8 d. Sterling*, besides other considerable Debts which he owed in England.

Press'd with these Difficulties, Mr. Baillie resolved to borrow a large Sum of Money, to pay off the most urgent of his Creditors, from whom he expected considerable Abatements or Compositions, upon the Prospect of immediate Payment:— 4500 *l. Sterling* was accordingly borrowed from the Earl of Hindford, upon a Mortgage of the Estate, and upon an Assignment of Mr. Baillie's whole Moveables, particularly the Stock of Cattle upon the Grounds:— This was but a temporary Expedient in his Distress; his Debts were so great, that it was evident nothing but a Sale of the Estate could effectually relieve him; and the chief Purpose of this Loan was, that Mr. Baillie might not be hurried so to sell his Estate at a Disadvantage, but to have Time to find a Purchaser; and with this View, by Agreement with the Earl of Hindford, the Term for Repayment of the Money thus borrowed was fixed for the Year 1716.

It was upon Occasion of this projected Loan from the Earl of Hindford, that Mr. John Hamilton, Clerk to the Signet, came first to be employed in Mr. Baillie's Business; the Contract with the Earl of Hindford bears Date the 10th and 13th Days of November 1708: The 4500 *l.* was thereby agreed to be advanced as called for by Mr. Baillie, on or before the Term of Whitsunday 1709; and Mr. Hamilton was employed by Mr. Baillie to peruse the Security to be granted for that Sum.

At the same Time Mr. Hamilton was directed by Mr. Baillie to look out for a Purchaser of his Estate, and first came into Treaty with Sir Archbald Hamilton of Roschaugh, who being informed of the Condition of the Estate, and bad Circumstances of the few Tenants upon it, declined the Purchase.

Mr. Hamilton was thereupon directed by Mr. Baillie to make an Offer of this Purchase to Mr. Lockhart of Carnwath, Part of whose Estate lay contiguous to the Estate of Walsen. — Mr. Lockhart having received the Proposal, entered into a Treaty for settling the Articles and Conditions of Sale; but the Circumstances of the Estate were such, that no certain Measure could be taken to fix a Rental for that Period, as the greatest Part thereof had been for some Years waste in Mr. Baillie's own Hands. But as the Estate had been regularly tenanted at the Time of Mr. Baillie the Father's Death in the Year 1694, and by the Son's intervening Misconduct and Mismanagement, was rather diminished than increased in its Value, after various Communings and Meetings, in which Mr. Baillie showed the greatest Anxiety to conclude the Bargain, it was proposed by him, and agreed to by Mr. Lockhart, that the Price should be Twenty one Years Purchase of the Money and Victual Rent that was payable out of these Lands at Mr. Baillie the Father's Death, converting the Victual at 100 *l. Scots per Chaldar*; which, considering the Interest of Money in the Year 1709, and the particular Circumstances of of this Estate, turned out to be a very great Price, 16 or 17 Years Purchase being the usual and customary Rate at which Lands over all Scotland were valued and sold in the Year 1709.

In these Terms the Bargain was at length verbally concluded; Mr. Hamilton, on the Behalf of Mr. Baillie, was by him directed to make out a Draught of the Agreement, which was afterwards transmitted to Mr. Montgomery of Mackiehill, as Agent and Attorney for Mr. Lockhart, was by him perused, and returned to Mr. Hamilton with some Alterations and Amendments; and as Mr. Baillie continued highly satisfied with the Terms and Conditions of this Sale, he directed Mr. Hamilton to extend, in proper Form, the Minute of Sale, to be signed by himself in the Abbey where he then resided, and from thence to be transmitted to Mr. Lockhart in the Country, to be compleated by his Subscription.

In this Interval of Time Mr. Baillie bethought himself of enlarging his Demands, and by a verbal

verbal Message which Mr. Hamilton carried to Mr. Lockhart, did insist, 1st, For a Faculty of Redemption; 2dly, To be entered *gratis* as Mr. Lockhart's Vassal, in that Part of the Estate which held of him; 3dly, To be released or discharged of all Arrears of Feu and Tiend Duties due and payable out of these Lands; 4thly, That Mr. Lockhart should obtain a Grant of Mr. Baillie's Escheat for Mr. Baillie's Use and Benefit; 5thly, That Mr. Lockhart should take a Right to the Debts owing to Mr. Baillie; by which last Condition, 'tis presumed it was intended that Mr. Lockhart should take Right to a Number of Bonds which Mr. Baillie had taken from the Bankrupt Tenants of this Estate for large Arrears of Rent.

Those Proposals were the Subject of several Communings; the Faculty of Redemption was at length yielded to Mr. Baillie and to the Heirs Male of his Body. — Mr. Lockhart did likewise agree to release the Arrears of Feu and Tiend Duties, and to admit Mr. Baillie *gratis* as his Vassal in that Part of the Estate which held of him: But the other two Articles proposed appear to have been absolutely rejected; and these Concessions on the Part of Mr. Lockhart, being accepted by Mr. Baillie, it was proposed and agreed to, that instead of ingrossing these in the Minute of Sale, which was already extended in Terms of the original Agreement, Mr. Lockhart should grant an Obligation to the abovementioned Purpose on a Paper apart.

1729. June 21. Upon the 21st of June Mr. Hamilton, by Appointment, waited on Mr. Baillie at his Lodgings in the Abbey, with two Copies of the Minute of Sale, that Mr. Baillie might subscribe the same, and which were afterwards to be transmitted to Mr. Lockhart to be compleated by his Subscription: — Whether Mr. Baillie did then sign both Copies of this Minute of Sale, does not with Certainty appear, and is immaterial, seeing any one of the Copies compleated by the Subscription of the Parties, thereby became binding and obligatory. — In Fact it appears that one Copy of this Minute of Sale, signed by Mr. Baillie, was by him delivered to Mr. Hamilton, with particular Instructions that he should carry the same to Mr. Lockhart to be subscribed by him: But as he had a natural Jealousy and Distrust of all Mankind, he was so anxious to have this Bargain compleated in the Terms agreed, that before he would entrust Mr. Hamilton, his own Agent, with that Copy of the Minute of Sale which was to be compleated by Mr. Lockhart's Subscription, he insisted for, and took from Mr. Hamilton, an Obligation under a Penalty of 500 l. to procure Mr. Lockhart's Subscription to the abovementioned Minute and relative Obligation. And Mr. Baillie was so well satisfied with Mr. Hamilton's Conduct in having found a Purchaser for the Estate, and with the Price at which it was sold, that, as a Reward for these and other Services, he voluntarily gave Mr. Hamilton his Obligation for Half a Year's Rent of the Estate.

The next Day, being the 22d of June, Mr. Hamilton waited on Mr. Lockhart at his House in the Country with the said Minute of Sale, where it was compleated by Mr. Lockhart's Subscription.

But Mr. Baillie's natural Instability and Fickleness of Temper, made him soon afterwards desirous to fly off from this, which evidently was a beneficial Bargain on his Part: He could not think of condescending to ask it as a Favour of Mr. Lockhart to be released from this Agreement, but vainly imagined, that because two Copies of the Minute of Sale were not subscribed and interchanged, there was still *Locus Penitentiae*, and forged a thousand Falshoods to induce a Belief that he had been cheated and imposed upon in this Bargain, by an unjustifiable Combination between Mr. Lockhart and Mr. Hamilton, whom he supposed to be corrupted to betray his Trust.

Mr. Lockhart, conscious to himself that no Bargain had ever been gone about in a fairer Manner, could not but think he was extremely ill used, when a groundless Clamour of this Kind was industriously raised and spread, so that to have given up the Bargain, under such Circumstances, would have appeared in the Eyes of the World as a tacite Acknowledgment of the Truth of those groundless Suggestions: Mr. Lockhart was willing to believe, that when Mr. Baillie came to think coolly upon the Matter, his own Interest, the most prevailing of all Considerations, would engage him to proceed in executing the Agreement; but as Mr. Baillie was inflexibly bent not to implement the Bargain of Sale, Mr. Lockhart was advised to require from Mr. Hamilton, under Form of Instrument and Protest, the above-mentioned Minute, and immediately thereafter to extend and tender to Mr. Baillie an exact Copy of the said Minute duly subscribed by him, which was accordingly done.

Mr. Lockhart having infest himself upon the Precept of Seizure, contained in the said Minute of Sale, took the proper Steps, by a Charge of Horning, to compel a specifick Performance of the Agreement.

Mr. Baillie applied to the Court of Session for a Suspension or Stay of Execution, and at the same Time brought an Action of Reduction, both against Mr. Lockhart and against Mr. Hamilton, to reduce and set aside the aforesaid Minute of Sale: — The Grounds particularly set forth in the said Bill of Suspension, and insisted upon as coincident with the Reasons of Reduction, were, "That the said Minute was never compleat, there being a Blank left, when subscribed by Mr. Baillie, for the Conversion of the Victual Rent, which was afterwards filled up at 100 l. per Chaldier, when Mr. Baillie was not present". Several Things were alledged to have been omitted in the Minute of Sale, which had been proposed and agreed to at their Communings; and it was particularly insisted, "That the Clause of Redemption was to have been in these Terms, viz. That it should be in Mr. Baillie's Power to have redeemed at any Time within twenty one Years, at twenty one Years Purchase of the Rent at the Time of the Sale, and that this was not at all mentioned in the said Minute; upon all which, and other pregnant Reasons, he had raised and executed a Summons of Reduction against Mr. Lockhart and Mr. Hamilton, as the same produced with the Bill of Suspension would testify". — He also insisted, "That the Minute of Sale ought to be set aside for Fraud, Circumvention and Lefion;" and it appears from the Proceedings in that Cause, that the following Grounds of Fraud, Circumvention, and Lefion, were repeated and insisted upon by Mr. Baillie's Council, viz.

1°. That in this Bargain there was *Lefio ultra dimidium*.
2°. That though it was agreed betwixt Mr. Hamilton and Mr. Baillie, that the Lands should be redeemable at any Time within the Space of Twenty one Years, yet by the Obligation, as to the Reversion, Mr. Hamilton had conceived the Clause in quite different Terms, viz. That the Land should be redeemable at the End of Twenty one Years.

3°. That though Mr. Baillie, at the Beginning of the Communing, told Mr. Lockhart, that he desired to take the Advice of Lawyers in that Affair before it was concluded, Mr. Lockhart required and took an Oath or Promise of Mr. Baillie not to communicate the Matter to any Person.

This Charge of Fraud and Circumvention was often made, and regularly put in Issue, in the Proceedings of the forefaid original Cause, and though Mr. Baillie had the Assistance of Eleven eminent Council, no Attempt was made to prove any such Fraud, Circumvention, or Lefion, or any Facility or Incapacity to contract, on the Part of Mr. Baillie, though the Facts and Circumstances, from which these are now pretended to be inferred, were then recent, and consequently as

Decree
the Realon
pension
duction.

1712. Fa
Mr. Lock
Action br
to ascertain
Amount

1717. D
And Dec
it.

Third Acti
by Mr. Lock
Mr. Baillie
ditors.

Scope the

And Dec
it.

1718. F

Fourth Acti
by Mr. Lock
Mr. Baillie
of his Credit

1720. N
Purport

And Dec
it
1722. J

Mr. Lock
off Part
Estate.

Appeal
by the C
of Mr.
dismissed

1740.
New Acti
tion brou
Dickson,
Brother,
claims.

as well known to Mr. Baillie and his Council, as they now can be, at the Distance of near forty Years, to the Appellant and his Council, who have been required, in the Course of the Proceedings, which are the Subject of the present Appeal, to point out or specify any one Circumstance of Fraud, Circumvention, or Lesion, now insisted upon and so confidently asserted, which was not suggested and insisted upon in the original Suit, when the very same Letters, Memorandums, and other Papers of any Consequence which are now brought, after so great a Length of Time, and after the Death of all the Parties principally interested in that Transaction, to support a fresh Suit, were all produced, and insisted upon, in that original Process; in which, after a Multitude of Representations, Supplications and Petitions, all insisting upon the above-mentioned Reasons of Suspension and Reduction, and after repeated Interlocutors, all in Favour of Mr. Lockhart, in the Years 1709, 1710, the Court by their Decree found and declared, *That the Minute of Sale and Agreement was a compleat Minute and Bargain, and that there was no Locus Pœnitentiæ, and repelled the Reasons of Suspension and Reduction.*

Decree repelling the Reasons of Suspension and Reduction.

1712. Feb.
Mr. Lockhart's Action brought to ascertain the Amount of Rent.

1717. Dec.
And Decree upon it.

Third Action brought by Mr. Lockhart against Mr. Baillie and his Creditors.

Scope thereof.

Mr. Lockhart having attained Possession of the Estate, in Pursuance of the above-mentioned Decree, was obliged to commence a new Process, to ascertain the Rental of the Lands, in 1694, that being made the Measure of the Purchase: — Mr. Baillie being a Party to this Suit, appeared by his Council, and obtained a conjunct Proof, with Mr. Lockhart, of the Rental: — Many Witnesses were examined who had been Tenants in the Premises, and the Proof being advised by the Lords of Session, Judgment was given, and a Decree thereupon extracted, FINDING and DECLARING the Rental referred to in the Year 1694, to be 4792 l. 11 s. Scots, or 399 l. 7 s. 7 d. Sterling.

Some of Mr. Baillie's Creditors having arrested or attached, in Mr. Lockhart's Hands, the Price of this Estate, Mr. Lockhart was obliged to raise a third Process of Multiplierpinding, in the Nature of a Bill of Interpleader, to which the Creditors Arresters and Mr. Baillie were made Parties; the Scope of which Process was, to ascertain what Proportion of the Money, in Mr. Lockhart's Hands due to Mr. Baillie, these Creditors were severally intitled to draw, that Mr. Lockhart might pay safely, and might in so far be exonerated of any Demand which Mr. Baillie might have against him for the Sums thus decreed to be paid to his Creditors.

And Decree upon it.

1718. Feb. 28.

To this Suit Mr. Baillie appeared, and made no Objection to Mr. Lockhart's Right or Title to bring such Action, or to his Creditors receiving Payment of their just Demands out of the Price of this Estate; but after strong Litigation between Mr. Baillie and some of his Creditors, concerning the Legality and Value of their Claims, Decree was pronounced, *ascertaining the Claims of the several Creditors who were Parties to that Suit, which Mr. Lockhart was found liable to pay out of the Price of the Estate, and was accordingly decreed to pay, and did pay soon thereafter.*

Fourth Action brought by Mr. Lockhart against Mr. Baillie and others of his Creditors.

1720. Nov.
Purport thereof.

After Payment made to this Class of Creditors, as there still remained a considerable Balance of the Price in Mr. Lockhart's Hands; and as other Arrangements were made by other Creditors of Mr. Baillie, Mr. Lockhart was obliged to institute a fourth Suit of Multiplierpinding, Exoneration, and Declarator, against such of those Creditors as were not within the Benefit of the former Decree, of which Number Mr. Baillie's Wife was one, claiming, under a Decree obtain'd before the Court of Session, a separate Maintenance yearly; and the Ends of that Suit, as set forth in the Libel, were, "That Mr. Baillie might be decreed to satisfy Mr. Lockhart for having detain'd the Possession of several Farms contrary to the Agreement and Minute of Sale. — That the neat Balance due by Mr. Lockhart to Mr. Baillie, after Payment of the Claims of the several Creditors above-mention'd, might be ascertain'd, and that upon Payment of the said Balance, Mr. Lockhart should be exonerated of the Price of the Lands, and of a separate Debt he owed to Mr. Baillie, which had in like Manner been affected by the Arrangements of the Creditors; — That Mr. Lockhart should be allowed to consign the Balance in the Hands of the Clerk of Process, or in the Bill Chamber, upon Mr. Baillie's Hazard, there to remain under Consignation, till Mr. Baillie should grant a valid Disposition of the Lands, in Impliment of the Minute of Sale, and deliver up the Title Deeds of the Estate."

In this Suit Mr. Baillie again appeared, and two new Claims were produced and allowed of by Mr. Baillie, viz. One Bill of Exchange of the 3d of May 1720, for Six hundred Pounds Sterling, and another Bill of Exchange of the 24th of the same Month, of Two hundred Pounds, both drawn by Mr. Baillie upon Mr. Lockhart, ordering him to pay these out of the Money in his Hands which he owed Mr. Baillie.

And Decree upon it.

1722. July 27.

In the Course of the Proceedings in this Suit, a conjunct Proof was, upon Request of Mr. Baillie's Council, allowed him for ascertaining the Value of the Damages claim'd by Mr. Lockhart upon Account of those Farms whereof he had not attain'd Possession conform to the Minute of Sale; — Mr. Baillie entered into a long Litigation with the Creditors Arresters, concerning the Value and Extent of their Claims; and these Points being determined by the Court, "Mr. Lockhart was decreed to pay Mr. Baillie's whole Debts claimed in that Suit; the Balance remaining in Mr. Lockhart's Hands was decreed to be paid to Mr. Baillie, upon his delivering to Mr. Lockhart a proper Disposition and Conveyance of the Lands; and till such Conveyance should be made, the Balance was at first order'd by the Court to be paid into the Hands of the Clerk of the Process, or Bills; but thereafter, at the Desire of Mr. Baillie, an Order of Court was obtain'd, directing the Balance to be lent to the Town of Edinburgh upon Interest, and at Mr. Baillie's Risque and Hazard, to be subject in whatever Hands it might be placed, to make good an Aliment of 50 l. per Annum to Mr. Baillie's Wife, and the Residue of the Interest to be paid to Mr. Baillie for his own Aliment and Sustenance."

Mr. Lockhart sold off Part of the Estate.

After so many legal Proceedings and Decrees, to all which Mr. Baillie had been a regular Party, Mr. Lockhart, who had thus paid to Mr. Baillie and his Creditors the greatest Part of the Price, could not entertain any Diffidence of his Title to this Estate, and apprehending no Hazard from an after Challenge, he proceeded at different Periods to sell off and grant Feu Rights of considerable Parts of these Lands, and bound himself in absolute Warranty to the several Purchasers; and though the Premises were sold in small Parcels, and with a Servitude of Moss for Fire from Mr. Lockhart's other Estate, he sold them at almost the same Rental and Price at which he had purchased them from Mr. Baillie.

Mr. Baillie continuing in his unfortunate Excesses and vicious Course of Life, was so frequently intoxicated with Liquor, that at last he became disordered in his Senses, and a Commission of Lunacy was taken out against him in 1732, which was never superseded during his Life.

Appeal brought by the Committees of Mr. Baillie and dismissed.

The Committees of Lunacy brought an Appeal in the House of Lords against the Interlocutors of the Court of Session in the original Process of Suspension, which being refer'd to a Committee, was dismiss'd, *for not being brought within the Time limited by the standing Order of the House.*

1740.
New Action of Reduction brought by Thomas Dickson, the Appellant's Brother, under whom he claims.

After the Death of Mr. Baillie and Mr. Lockhart, and of all others any Ways privy to the above-mention'd Purchase, excepting Mr. John Hamilton, Thomas Dickson, Husband and Dispossessor of Grizell Baillie, the only Daughter and Heir of the said John Baillie, brought a Process of Reduction and Improbation, with Concourse of his Majesty's Advocate, against Mr. Lockhart

Lockhart, (the Respondent in the original Appeal) eldest Son and Heir of Mr. *Lockhart* the Purchaser, for reducing the above-mention'd Minute of Sale of the Lands and Estate of *Walston* in the Year 1709; as also for reducing the other Decrets above-mentioned; — and the Grounds of the said Action as set forth in the Title are, *That Mr. Baillie was a weak and prodigal Person, that he was imposed upon, and fraudulently circumvented in the said Bargain, to his enormous Hurt and Lefson.*

Respondent's Plea to this Suit.

Mr. *Lockhart* the Respondent appear'd to this Process, and did particularly insist, *that after the great Variety of Proceedings and Decrets concerning this Transaction, and as Fraud, Lefson and Circumvention had been insisted on in the Proceedings in the original Suit, and over-rul'd by a Decret now become final; and as no new Circumstance either of Fraud, Circumvention, or Lefson, was now suggested or offered to be proved, other than what was suggested, and within the Cognizance of every Party at the Time of these former Suits, This Action was not now competent, at such a Distance of Time, when not only the principal Parties concern'd, but all others, by whose Evidence the Truth could have been discovered, were dead, whereby he was depriv'd of all possible Means of Proof.*

1740. July 2.
1st Interlocutor complained of by the Cross Appeal.

The Lord Ordinary by Interlocutory of this Date, FOUND the present Action of Reduction, Improbation and Declarator was not excluded by the Decret of Suspension produced.

Nov. 10.
2d complained of by the Cross Appeal.

Mr. *Lockhart* having preferred a Representation to the Lord Ordinary, complaining of the Interlocutor above recited, and Answers having been put in thereto, his Lordship by Interlocutor of this Date, having considered the same with the several Decrets and other Writings produced founded on, REFUSED the Desire of the Representation, and adhered to his former Interlocutor.

1741 June 19.
3d complained of by the Cross Appeal.

Mr. *Lockhart* thereupon prefer'd a Petition, and an additional Petition, to the whole Lords, complaining of the above-mentioned Interlocutors of the Lord Ordinary, and Answers having been put in thereto for *Thomas Dickson*, their Lordships by their Interlocutor of this Date, ADHERED to the Lord Ordinary's Interlocutor, and refused the Desire of both Bills.

Suggestions for *Dickson* in this new Suit.

This preliminary Defence being over-ruled, Parties went in to the Merits of the Cause; the Suggestions on the Part of *Thomas Dickson* were, "That Mr. *Baillie* was a weak Man, of a prodigal and imprudent Temper, incapable to manage his own Affairs with Discretion, liable to be imposed upon, and to suffer Advantages to be taken of him;—2° That he was greatly wronged, and imposed upon in making this Bargain, for that it was not at all necessary, prudent, or expedient for him at that Time to have sold his Estate;—That he had separate Funds, which, with the 4500 l. borrow'd from the Earl of *Hindford*, were sufficient to have cleared his whole Debts;—That he was made to believe, that he owed considerable Debts in *England*, though in Reality he owed none.—3° That the Manner in which this Agreement or Bargain of Sale was brought about, was Evidence of Circumvention, and that he was hurried into the Sale, by the Artifices of Mr. *Hamilton*, whom he suspected to have been corrupted by Mr. *Lockhart*.—4° That the Difference between the Price given for this Estate and the real Value, was so great, that this of it self amounted to Evidence of a Fraud."—It was admitted, that Mr. *Baillie* had a reasonable Share of Understanding, and that though neither his Disposition of Mind, nor the supposed Fraud in the Manner of concluding the Bargain, nor the pretended Lefson and Inequality of the Price might be such, as, taken separately, would be sufficient for reducing the Sale; yet, that the Whole taken together might amount to a Sort of cumulative Fraud, &c.

1741. July 28.

Upon these Allegations, and the Answers thereto made on the Part of Mr. *Lockhart*, the Lord Ordinary was pleased to allow to either Party a conjunct Proof, before Answer, for proving the Rental and Value of the Estate as it was after the Death of Mr. *Baillie's* Father, and prior to the Minute of Sale, and at the Date of the said Minute of Sale, and as it was immediately after the Date of the said Minute of Sale, or after the first Sett after Mr. *Lockhart's* entering into Possession; and for proving the other Facts insisted upon as Reasons for the Reduction and the Defences against the same;—and by a subsequent Interlocutor of the 28th of November 1741, the Court allowed to either Party a conjunct Probation not only of the Rental and Value of the Lands at the Periods before-mentioned, but also a conjunct Proof of any Facts which may tend to discover the yearly Value of the Lands from the first Sett after *Carnwath's* Purchase, till the Time they were feued out, and at the Time of the said Feuing, what the Feu Duty was, and what Consideration was paid to the Superior, and what Improvement or Meliorations, or what other Advantages for improving the Rent were made by Mr. *Lockhart*;—and ordered Mr. *Lockhart* to produce the Feu Charters.

Nov. 28.

Many Witnesses were examined, and several Deeds and Papers produced,

Article 1.
First Reason of Reduction.

And Mr. *Dickson's* Proof thereof.

For Proof of the first Article or Reason of Reduction, viz. *That Mr. Baillie was a weak Man, of a prodigal and imprudent Temper, incapable to manage his own Affairs with Discretion, liable to be imposed upon, and to suffer Advantages to be taken of him*;—Reference was made to the Depositions of a Number of Witnesses taken upon a Breive of Furiosity, which had been raised and prosecuted several Years before for finding Mr. *Baillie* to be fatuous and furious, which Proof was of Consent of both Parties repeated in and made Part of this Process; and as sundry of these Witnesses did swear to many Acts of Folly and Imprudence committed by Mr. *Baillie*, in the Management of his Country Affairs, and of later Years, during his Abode in the Abbey, it was insisted that these sufficiently proved that Mr. *Baillie* was a Person of that Disposition and Turn of Mind, to be easily over-reached and imposed upon in a Transaction of this Consequence.

Respondent's Answer.

That though Mr. *Baillie* had been concern'd in a Variety of Transactions of great Consequence, no one Instance could be proved or suggested, in which he had allowed any Advantage to be taken of him:—That his Unskilfulness in the Management of Country Affairs, or his Imprudence in these Particulars, had no Tendency to prove his being a weak or facile Person in the Sense of Law, liable to be over-reach'd or imposed upon:—That it was admitted that Mr. *Baillie* was endued with a competent Share of rational Understanding; and by Witnesses of unexceptionable Character, he was proved to be readier to take Advantages of others than to suffer any Advantage to be taken of him, and that his Fault lay in a vicious Turn of Mind and Want of Virtue, more than in the Want of rational Understanding;—That the particular Acts of Folly which Mr. *Baillie* was proved to have been guilty of in latter Years, during his Abode in the Abbey, were long posterior to the Minute of Sale; and by some of the Appellant's own Witnesses, proved to have proceeded from a Train of habitual Drunkenness; and more particularly it was proved by Mr. *Baillie's* Lawyers and Agents employed by him in the original Process of Suspension and Reduction, That he met with his Lawyers, stated his Case, and directed the Proceedings;—That upon these and other Occasions he conversed rationally, was of a positive Turn of Mind, strongly wedded to his own Opinion, and particularly jealous of those about him;—That his Facility or Weakness was never proposed or thought of by any of his Lawyers or others concerned in his Affairs, as a Reason of Reduction or Suspension of the Minute of Sale.

For

Article 2.
2d Reason of Reduction.

Answer.

Article 3d.
3d Reason of Reduction.
And 1st Branch thereof.

Answer.

2d Branch Reason of Reduction.

Respondent's Answer and 1st Branch thereof.

3d Branch Reason of Reduction.

Respondent's Answer.

4th Branch Reason of Reduction.

Respondent's Answer.

Article 2.
2d Reason of Re-
duction.

For proving the Second Article or Reason of Reduction, viz. *that it was neither necessary or expedient for Mr. Baillie to have sold his Estate, because the Money borrowed from the Earl of Hindford, with Mr. Baillie's other Funds, were sufficient to have cleared all his Debts*: There was produced a Number of Bonds due to him, all of old Dates, and a Particular was exhibited of Mr. Baillie's other Funds and Effects.

Answer.

It was answered for Mr. Lockhart, that if Mr. Baillie was under no legal Incapacity to sell his Estate, it was immaterial to enquire what his inductive Causes were, and whether rational or irrational: — That though the Estate had been charged with no other Debt than the 4500 *l.* borrowed from the Earl of Hindford, this of itself would have been sufficient to justify the Sale as rational and prudent—But that it appeared from the above-mentioned Decrets of Ranking of Mr. Baillie's Creditors, that his Debts in Scotland, contracted before this Minute of Sale, did amount to 74,923 *l.* Scots, or 6243 *l.* 13 *s.* 8 *d.* Sterling, besides other Debts he was owing in England, the Particulars of which, at this Distance of Time, it was impossible for the Respondent to state.—That the Bonds produced were of no Value, being mostly granted for Arrears of Rent by Bankrupt Tenants of this Estate, of which not one Farthing had to this Hour been recovered.—And that the only separate Fund of any Consequence, which Mr. Baillie was possessed of, was a Debt upon a Bankrupt Estate, which could be no immediate Fund of Relief to him in those Difficulties, which had obliged him to take Sanctuary in a Place of Privilege.

Article 3d.
3d Reason of Re-
duction.
And 1st Branch
thereof.

The Third Article or Reason of Reduction, viz. *That Mr. Baillie was circumvented and fraudulently drawn into this Bargain*, was branched out into the following Particulars.

It was objected in the first Place, *That Mr. Baillie was imposed upon, and made to believe that he was owing considerable Debts in England; and that this Circumstance was urged in a Letter from Mr. Hamilton to Mr. Baillie, as an additional Consideration for selling his Estate.*

Answer.

"That it was incredible that Mr. Baillie could have been induced to believe that he was owing considerable Debts in England, if the Fact had not been so: — That Mr. Hamilton must have had Information of these Debts from Mr. Baillie himself; — That Mr. James Baillie, who had been formerly employed by Mr. Baillie of Walston, as his Agent, had expressly deposed, That Mr. Baillie informed him he was owing considerable Debts in England; and as few of these English Creditors did appear in the above-mentioned Processes of Ranking, it was the more presumable that a considerable Part of the Money borrowed from the Earl of Hindford had been applied for the Payment of these English Debts." — But that however the Fact might be, Mr. Lockhart was no Ways concerned in this, and knew nothing about it.

2d Branch of 3d
Reason of Reduc-
tion.

2dly, It was alledged, *that Mr. Baillie had been hurried into this Bargain by the Artifice of Mr. Hamilton; — that the Sale of this Estate was for the first Time proposed to Mr. Baillie upon the 20th of June 1709; that it was finished by Mr. Baillie's subscribing the Minute of Sale on the 21st, and by Mr. Lockhart on the 22d; so that Mr. Baillie had neither sufficient Time to deliberate, or advise with his Friends in an Affair of this Consequence.*

Respondent's An-
swer and Proof
thereof.

But as no Proof was offered, or is yet referred to in Support of this Allegation; so the direct Contrary appears from the Depositions both of Mr. Hamilton and Mr. Montgomery of Mackiehill. — Mr. Hamilton deposes, "That it was the Subject of many Meetings and Communings," Mr. Montgomery deposes, "That the Draught of the Minute was sent to his Father, as Agent for Mr. Lockhart, to be perused; that it was amended by his Father, and returned to Mr. Hamilton as Agent for Mr. Baillie." — And it appears from other Parts of the Proof, "That Mr. Baillie went two several Times to Mr. Lockhart's Country Seat whilst this Affair was in Agitation." — What Space did really intervene from the Time it was first proposed to Mr. Lockhart, or how many Meetings and Communings thereupon ensued, previous to the Completion of the Bargain, could not now at this Distance of Time be discovered by the Respondent, otherwise than by Mr. Hamilton's Oath, to which Mr. Lockhart was willing and did propose to submit for Proof of this and every other controverted Fact; but this Mr. Dickson thought fit to decline and oppose.

3d Branch of the
3d Reason of Re-
duction.

3dly, It was objected, *that Mr. Garden of Midstrath, one of the Witnesses to Mr. Baillie's Subscription, was employed by Mr. Hamilton, and bribed by Mr. Lockhart, to prevail with Mr. Baillie, over whom he was supposed to have had an Ascendant, to enter into this Bargain of Sale; and upon a Discovery from the Accounts between Mr. Lockhart and his Steward, now at the Distance of near forty Years, that 25 Guineas was some Time afterwards paid to Mr. Garden of Midstrath, upon an Order from Mr. Lockhart, it was from thence presumed, that this Money must have been given to Mr. Garden for his good Offices, in prevailing with Mr. Baillie to sell his Estate.*

Respondent's An-
swer.

Mr. Lockhart could not take upon him to say, upon what particular Consideration this Sum of Money had been paid to Mr. Garden, further than as he was informed that it was paid for Horses which his Father had purchased from Mr. Garden, who was a Dealer in Horses, upon Commission from a Friend of Mr. Lockhart's in England. — Mr. Lockhart and Mr. Garden were both dead before this Objection was moved. — This Sum might have been paid upon many other Accounts, which cannot now be explained. — There was no Occasion to bribe Mr. Garden to use his Interest with Mr. Baillie to sell his Estate, as it appears from other Parts of the Evidence, that Mr. Baillie was abundantly solicitous upon that Head, the first Proposal for a Sale having sprung from himself, and that he courted Mr. Lockhart, not Mr. Lockhart him.

4th Branch of the
3d Reason of Re-
duction.

4thly, It was charged as an Article of Fraud against Mr. Hamilton, "that after Mr. Baillie had signified his Unwillingness to implement the Bargain, Mr. Hamilton put into Mr. Baillie's Hands a Paper of his own Hand-Writing, containing various Proposals and Considerations, in order to induce Mr. Baillie to proceed in performing the Bargain with Mr. Lockhart: — From which it was inferred, that the like undue Influence must have been used to prevail with Mr. Baillie, when he first entered upon this Bargain.

Respondent's An-
swer.

It never was made appear in this, or in the original Process of Suspension and Reduction, That any Paper of Mr. Hamilton's Writing, containing such Proposals, was sent to Mr. Baillie; But supposing such Proposals had really been made by Mr. Hamilton, after the Minute of Sale was signed, there was no Circumstance to induce a Belief that such Arguments had been used previous to the Signing of the Agreement. — It never was pretended that these Proposals sprung from Mr. Lockhart, or by any Directions from him, or that he was ever made acquainted with the Purport of them. — Mr. Baillie did himself propose to Mr. Hamilton to look out for a Purchaser of his Estate; and specially directed, that an Offer of it should be made to Mr. Lockhart, with whom the Bargain was at Length concluded; — so that before this Period it was impossible to suppose that Mr. Hamilton could have Occasion to use any Arguments with Mr. Baillie to forward a Sale which he himself had projected, and was so anxious to compleat; — and it was inconceivable what Influence these Proposals, whether proper or improper to the Purpose for which

5th Branch of the
3d Reason of Re-
duction.

which they were intended, could have upon the previous Minute of Sale, which, by a Decreet now irreversible, was found to have been a compleat Bargain.—

5° The last Circumstance refer'd to, for Evidence of *Walston's* being overreach'd, was, *That the Minute of Sale was not extended in Terms of certain Proposals said to have been taken down in Writing by Mr. Hamilton, as containing the Conditions, upon which Mr. Baillie was willing to sell his Estate, and more particularly, That whereas by these Proposals, Mr. Baillie had insisted for a Faculty of Redemption at any Time within the Space of twenty Years, upon Repayment of twenty one Years Purchase of the Rent at the Time of the Sale, the Faculty of Redemption, contained in Mr. Hamilton's Obligation to Mr. Baillie was so limited, that the Redemption was not competent till the End of twenty one Years, and was then only to be redeemable upon Payment of twenty one Years Purchase of that Rent, which the Lands should pay at the Time of the Redemption, and of what Sums Mr. Lockhart should bestow upon Meliorations and Improvements.*

Respondent's An-
swer.

That whatever the original Proposals might have been, it was ridiculous to argue, that because the Bargain had finally been concluded upon different Terms, therefore one of the Parties had been defrauded.—Two Points particularly insisted upon in these Proposals were undoubtedly no Part of the final Agreement, and no Complaint was ever made by Mr. Baillie upon that Account.—And as to the pretended Variations or Omissions relating to the Power of Redemption, they had formerly been brought by Mr. Baillie under the Consideration of the Court of Session, at a Time when he might have had the Advantage of examining all the Parties concerned in the Transaction upon their Oaths; and when he had an Opportunity of laying every Circumstance before the Court, that could have tended to have made out his Case: But then his Suggestions were supported by no Proof, and were accordingly overruled by the Court.

Now after that Judgment, the same Suggestions were again set up against the Respondent, when he was deprived of every Opportunity of proving the different Steps of the Transaction, or the Declarations or avowed Intentions of the Parties at that Time, any other Way than from what they then thought fit to reduce into Writing. It is not to be wondered at, if Mr. Lockhart refused to agree to the Articles at first proposed, if any general and unlimited Power of Redemption was then insisted upon, when he knew that immediately after the Purchase, he was necessarily to be at very great Expence and Trouble in rebuilding all the Houses upon more than one Half of the Estate, which it is admitted did then lie waste and untenanted. In such a Situation it was impossible that it could ever have been expected that he should consent, that the next Year after he had been at all that Trouble and Expence to bring the Estate only to its old Rent, Mr. Baillie or his Heir should be at Liberty to come and redeem the Estate for twenty-one Years Purchase of that Rent, without any other Consideration, perhaps only in order to sell it, when so improved, to some other Person.

Article 4.
4th Reason of Re-
duction.

For proving the fourth and last Article or Reason of Reduction, viz. *That the Price agreed to be paid, conform to the Rental 1694, as ascertained by the Decreet 1717, was no Ways equal to the real Worth and Value of the Lands*, numberless Schemes and Calculations were exhibited, founded upon false, imaginary and contradictory Suppositions.

Obj. 1.
For Mr. Dickson.

And in the first Place it was made a general Article of Complaint, *That the Price was not rated according to the Rent which the Lands paid at the Time of the Sale, but at a Time so far back as the Year 1694, when it was well known the Value of the Lands over all Scotland had rose considerably from 1694 to 1709.*

Respondent's An-
swer.

To this it was answered, that Mr. Baillie's Management of the Estate had been such, that it was in Nature impossible these Lands could have received any Improvement during his Possession.—That a great Part of them had been thrown Waste for many Years.—That the Tenants on the other Parts thereof were mostly Bankrupts.—That there was no Rental in the Year 1709, by which the Price could be regulated, so that there was a Necessity to have Recourse to that Rental which had been settled by Mr. Baillie the Father, and which, after many Years Experience, subsequent to the Sale, was found to be the full Value of what the Lands were able to pay.

Obj. 2.

2dly, And upon Supposition that the Rental 1694, was a proper Rule for establishing the Price, it was objected, *that besides Money and Virtual Rent payable by the Tenants in Walston and Elrixdale, in 1694, a considerable Part of the Rent consisted in other Prestations, such as Lint, Wool, Poultry, Carriages and personal Services, for which no Consideration was given, the Price being limited to 21 Years Purchase of the Money and Virtual Rent; and that the Tenants of these Lands were liable to such Services and Conditions, was attempted to be proved, by two Leases of a Part of these Lands, in the Years 1690, and 1691, from which it was infer'd, that the same Rent should be presumed to have been paid for all the other Oxcgangs of Walston and Elrixdale.* And as a further Evidence of this Fact, there was produced some Scrawls of Accounts of the Hand Writing of Mr. James Baillie, wherein there was a particular Account of the Rent payable by each Tenant, of the Payments by them severally made, and of the Arrears due from them respectively.

Answer.

That the Rental 1694 had been established by Decree of the Court of Session in the Year 1717, upon a most pregnant Proof by the Oaths of many concurring Witnesses, to which no Objection had ever been made.—That the Rental thus established was the Foundation of all the various Proceedings in the After-Decrees, ascertaining the Price to Mr. Baillie's Creditors, and the Balance due to himself.—That the Accounts produced by Mr. Dickson, and referred to, were no Ways authenticated or probative, and were in many Particulars contradicted by these two Leases which they were intended to support.—That by these Accounts every Tenant was stated as owing so great an Arrear, as evidently shewed that this could not possibly be a just and true Rental of the Estate.—That according to the uniform Practice in all Purchases, both judicial and voluntary, prior to the Year 1709, Poultry, Carriages, and personal Services, never were brought into any Rental, further than as they might be an Inducement to increase the Number of Years Purchase.—That sixteen and seventeen Years Purchase was proved in numberless Instances to have been the usual and customary Price of Lands in the Year 1709, and for many Years thereafter, though in some special Cases, particular Lands might rise to a higher Price, and therefore that twenty one Year's Purchase of the Money and Virtual Rent in 1694, was an adequate Price, even supposing it to be proved, as it was not, that these other Particulars had been prestable by the Tenants of that Part of the Estate; and also supposing that these Lands had risen in their Value in the same Proportion as other Lands in Scotland from the Year 1694, to the Year 1709.

Obj. 3.

More particularly with regard to these Oxcgangs of Walston and Elrixdale, which by the Rental in 1694, as established by the Decreet in 1717, are found to have paid 30l. 7s. 8d. per Oxcgang, it was objected, *That as by the Minute of Sale, Mr. Lockhart was intitled to the Rents for the Year 1710, it appeared from the Rent Rolls, as stated by Mr. Lockhart's Steward, for such of these Lands as were that Year tenanted, That the Rent of each Oxcgang, was charged at the Rate of 40l.; and from hence it was contended that it appeared that these Oxcgangs must have been lett at the aforesaid Rent, prior to Mr. Lockhart's Entry; and as these Oxcgangs were lett for the same Rent*

Rent in the Year 1711, it was insisted that this was Proof of the real Value of the Lands at the Time of the Sale.

Respondent's Answer.

That the Proofs referred to were clearly refuted by the Testimonies of Numbers of Witnesses : — That though Mr. *Baillie*, anxious to establish a high nominal Rent, was proved to have demanded from the Tenants in these Farms 40 *l. Scots per Oxcang*, it was in like Manner proved, and by the same Witnesses, that the Tenants did positively refuse to give that Rent, and insisted that 33 *l. 6 s. 8 d.* was the utmost the Lands could possibly pay, and that they would agree to pay no more. — That soon after the Purchase, Mr. *Montgomery* of *Mackiehill*, acting as Mr. *Lockhart's* Steward, did convene these Tenants, and examined them upon Oath to what Rent they had agreed to pay to Mr. *Baillie* ; — and although the Tenants declared the Fact as above stated, Mr. *Montgomery*, unwilling to accept of a less Rent than what, he was inform'd, Mr. *Baillie* had demanded, did state the Rental of these Farms as at 40 *l.* and prevail'd with the Tenants, (as an Experiment what Rent these Farms could truly yield, now that they would be under regular Management) to agree that these Oxcangs should be stated at 40 *l.* for that and the succeeding Crop, but under *this express Promise and Condition*, That if upon Tryal this should be found too high a Rent, it should be restricted to 33 *l. 6 s. 8 d.* — That upon the Faith of this Promise the Tenants continued in Possession of these Farms ; but as upon Tryal it was found, and distinctly proved, that 40 *l.* was by far too high a Rent, the Tenants demanded, and Mr. *Lockhart*, upon a fair Representation of the Fact, did consent to the Restriction, and by a proper Writing ordered the succeeding Steward to state Accounts with the Tenants of these Farms, at the Rate of 33 *l. 6 s. 8 d. per Oxcang*. — That in the Year 1709, and for many Years thereafter, the Tenants of this whole Estate were in bad Circumstances, and unable to pay their Rents. — That they fell greatly in Arrear, many of them became bankrupt, and others quitted their Farms, finding that even 33 *l. 6 s. 8 d.* was more than these Grounds were capable to afford. — That Mr. *Lockhart* attempted to raise the Rent by Degrees, which continued to fluctuate for many Years, and could never be brought to a standing Rental. — That these Arrears encreasing annually, Mr. *Lockhart* resolved to sell off a considerable Part of this Estate, which he executed in the most beneficial Manner, by feuing them out in small Parcels, and got from these Purchasers near to the same Price which he paid to Mr. *Baillie*, though the Value of Lands in general over Scotland did rise considerably after his Purchase of this Estate. — That these Oxcangs continue at this Day to pay near the very same Rent at which they had been purchased by Mr. *Lockhart*, and by him feued out. — All which Particulars were clearly and distinctly proved, so that there was no Room to presume the contrary ; and it was in like Manner proved, by a Cloud of Witnesses, who all knew the Condition and Value of these Farms, that 33 *l. 6 s. 8 d.* was the highest Rent that these Oxcangs could possibly yield.

July 15. Interlocutor complained of by the original Appeal.

The Cause being argued before the Lords of Session, July 15, 1747, their Lordships pronounced the following Interlocutor. *The Lords having considered the State of the Process, Writings produced, and Depositions of the Witnesses adduced, find the Reasons of the Reduction not proven, and absolve and decern.*

December 15. Interlocutor complained of by the original Appeal.

Against this Interlocutor *Thomas Dickson* preferred a Reclaiming Petition, to which Answers were put in for the Respondent ; thereafter he put in an additional Petition, and Replies to the Respondent's Answer, and Answers were put in for the Respondent to Mr. *Dickson's* additional Petition. Upon advising of which, the Lords, by Interlocutor of this Date, *refused the Desire of the said Petitions, and adhered to their former Interlocutor.*

Thomas Dickson died immediately after this Decree, having first conveyed his Estate real and personal to *David Dickson*, who has brought his Appeal against the forefaid Interlocutors of the 15th of July, and 15th of December, 1747.

Mr. *Lockhart* has also brought a Cross Appeal against the Lord Ordinary's Interlocutors above recited of the 2d of July and 10th of November, 1740. — and the subsequent Interlocutor of the whole Lords June 19, 1741, and humbly hopes the Interlocutors complained of by the said Cross Appeal, may be reversed, for these amongst other

R E A S O N S .

- I. For that after the Multitude of legal Proceedings, and judicial Determinations, relating to this Transaction, and founded entirely upon this Minute of Sale, a Person claiming by Conveyance from an Heir of one who was a Party to all those Proceedings, and concluded by them, ought not now, without Pretence of any new Discovery, to be allowed to bring the Whole again into Dispute, upon Suggestions and Allegations all made in the former Proceedings, and all over-ruled. In the Year 1709, when the Transaction was recent, Mr. *Baillie* thought fit, upon the very same Grounds on which the present Action is founded, to bring an Action of Suspension and Reduction : His Suggestions and Pretences were all, after a very great Litigation, in a Suit that continued two Years, over-ruled and repelled : And the Minute of Sale confirmed, and decreed to be carried into Execution : — That Judgment pronounced at a Time when all the Parties to the Transaction were alive, and able to bring Proof of the several Circumstances material in Suit, ought now to be conclusive.
- II. For that the Minute of Sale, thus established by the Decree of the Court, was afterwards submitted to, without any Objection, as the Rule between the Parties, and made the Foundation of several other legal Proceedings. — After a Rental of the Estate had in pursuance thereof been judicially declared, the late Mr. *Lockhart* was decreed to pay the Debts affecting that Estate. — The several Claims and Incumbrances upon it were for that End ascertained. — The Balance due to Mr. *Baillie* out of the Price stated and declared by the Court. — And many Witnesses examined to determine the particular Damage Mr. *Lockhart* had sustained by Mr. *Baillie's* Non-compliance with a particular Article comprehended in the Minute of Sale. — Part of the Balance actually paid to Mr. *Baillie's* Wife, upon his Account. — And the rest decreed, at his Request, to be placed out in his Name at Interest for his Behoof. — All these different Proceedings, in which Mr. *Baillie* was a concurring Party, are the strongest Proofs of an Acquiescence under, and Homologation of, that Contract, which ought not now to be allowed to be disputed.
- III. After so great a Variety of Decrees, and Payments made to Mr. *Baillie's* Creditors in Pursuance thereof, and after the great Length of Time during which the Possession had been unmolested, Mr. *Lockhart* had great Reason to rely upon his Title to this Estate, and under that Persuasion sold great Part of the Lands to different Purchasers, who, if the Appellant was

to prevail, would be stript of their Property, which they have improved at a great Expence, and be entitled to recover from the Respondent very great Damages for that Eviction.

Mr. Lockhart also humbly hopes, that the Interlocutors complained of in the original Appeal shall be affirmed, for these among other

R E A S O N S.

- I. For that the Charge of Fraud, Circumvention and Lession, upon which a Bargain concluded near 40 Years ago, is now attempted to be set aside, is founded only on Presumptions unsupported by any Proof; on groundless Reflections and unjust Surmises, denied in the Life-time of the Persons acquainted with the Transaction, and not then attempted to be proved, when every Opportunity was to be had of disclosing the Truth; but now set up when the Parties concerned are dead, against their Heirs, unacquainted with the Circumstances attending it, and utterly unable to procure any Proof to defend themselves.
- II. For that there is not the least Pretence of Proof that the Person with whom this Transaction was concluded, was liable to be imposed on.—And though it appears that he was concerned in a great Variety of Transactions, it is not pretended that any one of them ever was attempted to be impeached, or that in any one Instance he was over-reached. But on the contrary, before his irregular Manner of Life had brought on that Disorder, which occasioned a Commission to be taken out, which was above twenty Years after this Transaction, it is proved that he was always of a jealous and distrustful Temper, ready enough to take an Advantage of others, but ever careful that none should be taken of him.
- III. The Circumstances attending the Transaction are such as evidently shew no Design of Fraud: The Purchase was not of Mr. Lockhart's seeking; it is unquestionable that the Proposal came from Mr. Baillie.—The Person principally concerned in carrying it on, was employed by Mr. Baillie in that as he had been in other Business before on his Behalf: One who never was employed by Mr. Lockhart either before or since.—The Suggestions of Hurry and Precipitation are refuted by positive Evidence in the Cause, from which it appears that there were several Meetings at different Places to settle the Terms.—And there is not any one Circumstance attempted to be proved, that in the least tends to shew any undue or unjust Design in Mr. Lockhart;—He suggested nothing to induce, he concealed nothing that could prevent the Sale of Mr. Baillie's Estate:—Proposals were made to him, not such as he liked. He offer'd the Terms on which he would purchase, and they were agreed to; very unhappily for him, as he and his Family have upon that Account been involved in Suits for many Years, not likely yet to have an End.
- IV. The strongest and most convincing Evidence to shew the Fairness of the Transaction, is, that the Price given for the Estate, appears, from a great Variety of Proof, to have been a full and adequate Consideration: Above half the Estate is admitted to have then been untenanted, and without any Houses; the Tenants in the remaining Part were in bad Circumstances and great Arrears; and tho' large Sums were afterward laid out upon this Estate, the Encrease of Rent above that at which it was purchased was extremely inconsiderable—even at that Rent the Tenants run into great Arrears.—Mr. Lockhart sold the greatest Part of the Estate at almost the same Rent, and for near the same Price at which he purchased it, and it continues to be lett yearly at the same Rent at this Day.

Wherefore for these and other Reasons Mr. Lockhart humbly hopes the Interlocutors complained of by his Cross Appeal shall be reversed, and the Interlocutors complained of by the original Appeal shall be affirmed, and that Appeal dismiss'd with Costs; and such other Relief given him, as to your Lordships in your great Wisdom and Justice shall seem meet.

A. L. LOCKHART.
C. ERSKINE.

21. Aprilis 1748.

It is Declared That it appears to this House not to be necessary in the present State of the said Causes to determine the Question arising upon the Interlocutors complained of in the Cross Appeal, and it is therefore Ordered that the said Cross Appeal be dismiss'd; And it is further Ordered & Adjudg'd that the said Original Appeal be and is hereby dismiss'd—this House, and that the said Interlocutors therein complain'd of be and the same are hereby affirmed.

To be heard at the Bar of the House of Lords
on Friday, April the 15, 1748.

The CASE of George Lockhart Respondent in the Original Appeal.

The said George Lockhart, - - - Appellant.
The said David Dickson, and his Majesty's Advocate, - - - Respondents.

George Lockhart of Carnwath, Esq; Elderst Son and Heir of George Lockhart, of Carnwath, Esq; deceased, - - - Respondents.

was Husband and Respondent of the deceased John Baillie of Walsby, and his Majesty's Advocate, - - - Appellant.